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# Supreme Court of the United States

October Term, 1947

No. 158

ISABEL KAY, BERTHA BUTMAN and BERTHA BUTMAN, as  
Executrix under the Will of JULIA KAY,

*Petitioners,*

v.

EMILY W. MACCORMACK, EDITH M. MACCORMACK, and ROBERT  
S. MACCORMACK, JR., as Executors and Trustees under  
the Will of ROBERT S. MACCORMACK, deceased, and MARIE  
HEGEMAN WARNOCK, individually and as surviving execu-  
trix of the Estate of HENRY B. HEGEMAN, deceased, and  
MAX R. HOENER, substitute-successor executor under the  
Will of GEORGE L. BUCKMAN,

*Respondents.*

## REPLY BRIEF OF PETITIONERS

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ROBERT S. MACCORMACK, JR., as Executors and Trustees  
under the Will of ROBERT S. MACCORMACK, deceased, and  
MARIE HEGEMAN WARNOCK, individually and as surviving  
executrix of the Estate of HENRY B. HEGEMAN, deceased,  
and MAX R. HOENER, substitute-successor executor under  
the Will of GEORGE L. BUCKMAN,

*Respondents.*

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## REPLY BRIEF OF PETITIONERS

The petitioners file this brief in reply to the brief in opposition of Robert S. MacCormack, Jr. as Executor and Trustee under the Will of Robert S. MacCormack, deceased.

Respondent, while making no attempt to answer the petition herein on the merits, for the first time in this litigation contends that these petitioners were not aggrieved by the determination of the court below and hence that they have no interest in the question presented by the petition for certiorari.

The contention that the petitioners were not aggrieved by the determination below is apparently based upon two distinct grounds: (1) that the supplemental petition of the Executor which initiated the proceeding for allocation of estate taxes to which the respondents were sought to be made parties by supplemental citation was filed pursuant to the direction of the Surrogate rather than upon the motion of either the Executor or these petitioners and that therefore these petitioners are in no position to complain; and (2) that the respondents can still be sued by the Executor in the courts of another state, if the Surrogate so directs, and that therefore the petitioners were not aggrieved by the determination that the Surrogate did not have jurisdiction to determine the liability, if any, of the respondents in this proceeding.

## I

As to the first ground, the respondent's contention turns solely upon the fact that the proceeding for allocation of estate taxes under Section 124 of the New York Decedent Estate Law was initiated by the Executor at the direction of the Surrogate rather than voluntarily and of his own motion. No contention is made and certainly none could soundly be made that these petitioners would not have been necessary and proper parties if the Executor himself had initiated the petition for allocation of estate taxes in connection with the original petition for accounting. In such a proceeding the interests of these petitioners and respondents would clearly have been adverse and there is no question that the petitioners would have had the right to appeal from a decision in favor of the respondents. The fact that the proceeding was commenced by the Executor at the direc-

tion of the Surrogate in no way affects the nature of the proceeding nor the interests of the parties thereto. These petitioners are as much aggrieved by a determination that the Surrogate did not have jurisdiction over these respondents in a proceeding initiated at the direction of the Surrogate as they would have been aggrieved in the identical proceeding had it been initiated by the Executor himself.

In this connection it is of interest that respondent recognized that petitioners were interested parties when he and the other respondents appealed to the Appellate Division from the order of the Surrogate here in question since the notice of appeal was directed not only to the Executor but also to the present petitioners. Indeed, throughout this litigation there has never been any suggestion up to this point that the petitioners had no interest in the question raised by this petition.

## II

The second ground for the contention that the petitioners were not aggrieved by the determination of the court below, namely, that despite the determination of the court below that the Surrogate did not have jurisdiction over the person of the respondents the respondents can subsequently be sued in the courts of another state, is also obviously unsound. If this ground were correct, it would follow that a party is never aggrieved by a determination that a court does not have jurisdiction over the person of an adverse party since it is always true that such a determination is no bar to instituting a suit in some other court.

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It is submitted that the objection of the respondent MacCormack, raised now for the first time in this litigation, that these petitioners were not aggrieved by the determination of the court below is totally without merit.

Respectfully submitted,

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Attorneys for Petitioners.